

(2) When a non-Treasury disbursing official conducts the offset, that disbursing official will transmit to FMS all of the information necessary for FMS to send notification under paragraph (h)(1) of this section, including the amount of any fees that the creditor agency is responsible for paying.

(3) FMS will make available to the payment agency the information contained in the notification of offset, so that the payment agency may direct any questions concerning the claim to the appropriate contact person in the creditor agency.

(i) *Disposition of amounts collected.* (1) FMS will transmit amounts collected for debts, less fees charged pursuant to paragraph (j) of this section, to the appropriate creditor agency or agencies. Alternatively, FMS may bill the creditor agency for any fees charged pursuant to paragraph (j) of this section.

(2) If FMS learns from a paying agency that a payment should not have been made, and thus not offset, FMS will notify the creditor agency. FMS may deduct the offset amount from future amounts payable to the creditor agency. Alternatively, upon FMS's request, the creditor agency shall return promptly to the disbursing official an amount equal to the amount of the offset (without regard to whether any other amounts payable to such disbursing official have been paid).

(3) Generally, the disbursing official is not responsible for refunding money to debtors. The creditor agency shall notify FMS any time the creditor agency returns all or any part of an offset payment to an affected payee. See paragraph (d)(10)(v) of this section. FMS and the creditor agency shall adjust the debtor records appropriately.

(j) *Fees.* FMS may charge a fee sufficient to cover the full cost of implementing the centralized offset program, including the amount of any fees charged by other disbursing officials conducting an offset under this section. FMS may deduct the fees from amounts collected by offset or may bill the creditor agencies. FMS will charge fees only for actual offsets collected.

(k) *Waiver of certain provisions under the Computer Matching Privacy and Protection Act of 1988.* As authorized by 31 U.S.C. 3716(f), FMS, under a delegation

of authority from the Secretary, has waived certain requirements of the Computer Matching and Privacy Protection Act of 1988, Pub. L. No. 100-503, as amended, for matches between delinquent debt records and payment records for offset purposes upon written certification by the head of the creditor agency that the requirements of 31 U.S.C. 3716(a) have been met. Specifically, for administrative offset of Federal payments other than tax refunds, FMS has waived the requirements for a computer matching agreement contained in 5 U.S.C. 552a(o) and for post-match notice and verification contained in 5 U.S.C. 552a(p) so long as the creditor agency provides certification to FMS in accordance with the provisions of paragraph (d)(6) of this section. Such waiver is not necessary for offset of Federal tax refunds, pursuant to 5 U.S.C. 552a(a)(8)(B). The Data Integrity Board of the Department of the Treasury shall review and include in reports under 5 U.S.C. 552a(u)(3)(D) a description of the matching activities conducted for centralized offset under this section. No other Data Integrity Board is required to take any action under 5 U.S.C. 552a(u) concerning these computerized comparisons.

[67 FR 78942, Dec. 26, 2002, as amended at 70 FR 7135, Jan. 21, 2005]

§ 285.7 Salary offset.

(a) *Purpose and scope.* (1) This section establishes FMS's procedures for the centralized offset of Federal salary payments to collect delinquent nontax debts owed to the United States. This process is known as centralized salary offset. Rules issued by the Office of Personnel Management contain the requirements Federal agencies must follow prior to conducting centralized or non-centralized salary offset and the procedures for requesting offsets directly from a paying agency, rather than through TOP. See 5 CFR 550.1101 through 550.1108.

(2) This section implements the requirement under 5 U.S.C. 5514(a)(1) that all Federal agencies, using a process known as centralized salary offset computer matching, identify Federal employees who owe delinquent nontax debt to the United States. Centralized salary offset computer matching is the

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computerized comparison of delinquent debt records with records of Federal employees. The purpose of centralized salary offset computer matching is to identify those debtors whose Federal salaries should be offset to collect delinquent debts owed to the Federal Government.

(3) This section specifies the delinquent debt records and Federal employee records that must be included in the salary offset matching process. For purposes of this section, delinquent debt records consist of the debt information submitted to the Financial Management Service for purposes of administrative offset as required under 31 U.S.C. 3716(c)(6). Agencies that submit their debt to FMS for purposes of administrative offset are not required to submit duplicate information for purposes of centralized salary offset computer matching under 5 U.S.C. 5514 and this section.

(4) This section establishes an inter-agency consortium to implement centralized salary offset computer matching on a government-wide basis as required under 5 U.S.C. 5514(a)(1).

(5) The receipt of collections from salary offsets does not preclude a creditor agency from pursuing other debt collection remedies, including the offset of other Federal payments to satisfy delinquent nontax debt owed to the United States. A creditor agency should pursue, when deemed appropriate by such agency, such debt collection remedies separately or in conjunction with salary offset.

(6) This section does not govern the centralized offset of final salary payments or lump-sum payments made to employees who have left an agency's employ. The centralized offset of such payments is governed by § 285.5 of this part.

(b) *Definitions.* For purposes of this section:

Administrative offset means withholding funds payable by the United States to, or held by the United States for, a person to satisfy a debt owed by the payee.

Agency means a department, agency or subagency, court, court administrative office, or instrumentality in the executive, judicial, or legislative

branch of the Federal government, including government corporations.

Centralized salary offset computer matching means the computerized comparison of Federal employee records with delinquent debt records to identify Federal employees who owe such debts.

Creditor agency means any agency that is owed a debt.

Debt means any amount of money, funds, or property that has been determined by an appropriate official of the Federal government to be owed to the United States by a person, including debt administered by a third party acting as an agent for the Federal Government. For purposes of this section, the term "debt" does not include debts arising under the Internal Revenue Code of 1986 (26 U.S.C.).

Delinquent debt record means information about a past-due, legally enforceable debt, submitted by a creditor agency to FMS for purposes of administrative offset (including salary offset) in accordance with the provisions of 31 U.S.C. 3716 and applicable regulations. Debt information includes the amount and type of debt and the debtor's name, address, and taxpayer identifying number.

Disbursing official means an officer or employee designated to disburse Federal salary payments. This section applies to all disbursing officials of Federal salary payments, including but not limited to, disbursing officials of the Department of the Treasury, the Department of Defense, the United States Postal Service, any government corporation, and any disbursing official of the United States designated by the Secretary.

Disposable pay has the same meaning as that term is defined in 5 CFR 550.1103.

Federal employee means a current employee of an agency, including a current member of the Armed Forces or a Reserve of the Armed Forces (Reserves), employees of the United States Postal Service, and seasonal and temporary employees.

Federal employee records means records of Federal salary payments that a paying agency has certified to a disbursing official for disbursement.

FMS means the Financial Management Service, a bureau of the Department of the Treasury.

Paying agency means the agency that employs the Federal employee who owes the debt and authorizes the payment of his or her current pay. A paying agency also includes an agency that performs payroll services on behalf of the employing agency.

Salary offset means administrative offset to collect a debt owed by a Federal employee from the current pay account of the employee.

Secretary means the Secretary of the Treasury or his or her delegate.

Taxpayer identifying number means the identifying number described under section 6109 of the Internal Revenue Code of 1986 (26 U.S.C. 6109). For an individual, the taxpayer identifying number is the individual's social security number.

(c) *Establishment of the consortium.* As required by the provisions of 5 U.S.C. 5514(a)(1), by issuance of this section, the Secretary establishes an inter-agency consortium to implement centralized salary offset computer matching. The consortium initially includes all agencies that disburse Federal salary payments, including but not limited to, FMS, the Department of Defense, the United States Postal Service, government corporations, and agencies with Treasury-designated disbursing officials. The membership of the consortium may be changed at the discretion of the Secretary, and the Secretary will be responsible for the ongoing coordination of the activities of the consortium.

(d) *Creditor agency participation.* (1) As required under 5 U.S.C. 5514(a)(1), creditor agencies shall participate at least annually in centralized salary offset computer matching. By notifying FMS of all past-due, legally enforceable debts delinquent for more than 180 days for purposes of 31 U.S.C. 3716(c)(6), creditor agencies shall have met the requirement set forth in 5 U.S.C. 5514(a)(1). Additionally, creditor agencies may notify FMS of past-due, legally enforceable debts delinquent for less than 180 days for purposes of centralized offset.

(2) Prior to submitting debts to FMS for purposes of administrative offset

(including salary offset) and centralized salary offset computer matching, Federal agencies shall prescribe regulations in accordance with the requirements of 31 U.S.C. 3716 (administrative offset) and 5 U.S.C. 5514 (salary offset).

(3) Prior to submitting a debt to FMS for purposes of collection by administrative offset, including salary offset, creditor agencies shall provide written certification to FMS that:

(i) The debt is past-due and legally enforceable in the amount submitted to FMS and that the creditor agency will ensure that collections (other than collections through offset) are properly credited to the debt;

(ii) Except in the case of a judgment debt or as otherwise allowed by law, the debt is referred for offset within ten years after the agency's right of action accrues;

(iii) The creditor agency has complied with the provisions of 31 U.S.C. 3716 (administrative offset) and related regulations including, but not limited to, the provisions requiring that the creditor agency provide the debtor with applicable notices and opportunities for a review of the debt; and

(iv) The creditor agency has complied with the provisions of 5 U.S.C. 5514 (salary offset) and related regulations including, but not limited to, the provisions requiring that the creditor agency provide the debtor with applicable notices and opportunities for a hearing.

(4) The creditor agency is not required to submit the certification set forth in paragraph (d)(3)(iv) of this section prior to submitting a debt to FMS. However, if the creditor agency does not provide such certification initially, the creditor agency shall provide the Federal employee with the notices and opportunity for a hearing, as required by 5 U.S.C. 5514 and applicable regulations, and shall make the necessary certification before the disbursing official offsets a salary payment pursuant to this section. A creditor agency may submit a debt without the requirement set forth in paragraph (d)(3)(iv) of this section, only if the creditor agency intends to complete the certification after complying with the provisions of 5 U.S.C. 5514 and applicable regulations.

(5) The creditor agency shall notify FMS immediately of any payments credited by the creditor agency to the debtor's account, other than credits for amounts collected by offset, after submission of the debt to FMS. The creditor agency also shall notify FMS immediately of any change in the status of the legal enforceability of the debt, for example, if the creditor agency receives notice that the debtor has filed for bankruptcy protection.

(e) *Centralized salary offset computer match.* (1) Delinquent debt records will be compared with Federal employee records maintained by members of the consortium or paying agencies. The records will be compared to identify Federal employees who owe delinquent debts for purposes of collecting the debt by administrative offset. A match will occur when the taxpayer identifying number and name of a Federal employee are the same as the taxpayer identifying number and name of a debtor.

(2) As authorized by the provisions of 31 U.S.C. 3716(f), FMS, under a delegation of authority from the Secretary, has waived certain requirements of the Computer Matching and Privacy Protection Act of 1988, 5 U.S.C. 552a, as amended, for administrative offset, including salary offset, upon written certification by the head of the creditor agency that the requirements of 31 U.S.C. 3716(a) have been met. Specifically, FMS has waived the requirements for a computer matching agreement contained in 5 U.S.C. 552a(o) and for post-match notice and verification contained in 5 U.S.C. 552a(p). The creditor agency will provide certification in accordance with the provisions of paragraph (d)(3)(iii) of this section.

(f) *Salary offset.* When a match occurs and all other requirements for offset have been met, as required by the provisions of 31 U.S.C. 3716(c) the disbursing official shall offset the Federal employee's salary payment to satisfy, in whole or part, the debt owed by the employee. Alternatively, the paying agency, on behalf of the disbursing official, may deduct the amount of the offset from an employee's disposable pay before the employee's salary payment is certified to a disbursing official for disbursement. The salary paying agen-

cy shall use such records as it deems necessary to accurately calculate disposable pay in accordance with 5 CFR 550.1103.

(g) *Offset amount.* (1) The amount offset from a salary payment under this section shall be the lesser of:

(i) The amount of the debt, including any interest, penalties and administrative costs; or

(ii) An amount up to 15% of the debtor's disposable pay.

(2) Alternatively, the amount offset may be an amount agreed upon, in writing, by the debtor and the creditor agency.

(3) Offsets will continue until the debt, including any interest, penalties, and costs, is paid in full or otherwise resolved to the satisfaction of the creditor agency.

(h) *Priorities.* (1) A levy pursuant to the Internal Revenue Code of 1986 shall take precedence over other deductions under this section.

(2) When a salary payment may be reduced to collect more than one debt, amounts offset under this section will be applied to a debt only after amounts offset have been applied to satisfy past due child support debts assigned to a State pursuant to 402(a)(26) or section 471(a)(17) of the Social Security Act.

(i) *Notice.* (1) Before offsetting a salary payment, the disbursing official, or the paying agency on behalf of the disbursing official, shall notify the Federal employee in writing of the date deductions from salary will commence and of the amount of such deductions.

(2)(i) When an offset occurs under this section, the disbursing official, or the paying agency on behalf of the disbursing official, shall notify the Federal employee in writing that an offset has occurred including:

(A) A description of the payment and the amount of offset taken;

(B) The identity of the creditor agency requesting the offset; and,

(C) A contact point within the creditor agency that will handle concerns regarding the offset.

(ii) The information described in paragraphs (i)(2)(i)(B) and (i)(2)(i)(C) of this section does not need to be provided to the Federal employee when the offset occurs if such information

was included in a prior notice from the disbursing official or paying agency.

(3) The disbursing official will advise each creditor agency of the names, mailing addresses, and taxpayer identifying numbers of the debtors from whom amounts of past-due, legally enforceable debt were collected and of the amounts collected from each debtor for that agency. The disbursing official will not advise the creditor agency of the source of payment from which such amounts were collected.

(j) *Fees.* Agencies that perform centralized salary offset computer matching services may charge a fee sufficient to cover the full cost for such services. In addition, FMS, or a paying agency acting on behalf of FMS, may charge a fee sufficient to cover the full cost of implementing the administrative offset program. FMS may deduct the fees from amounts collected by offset or may bill the creditor agencies. Fees charged for offset shall be based on actual administrative offsets completed.

(k) *Disposition of amounts collected.* The disbursing official conducting the offset will transmit amounts collected for debts, less fees charged under paragraph (j) of this section, to the appropriate creditor agency. If an erroneous offset payment is made to a creditor agency, the disbursing official will notify the creditor agency that an erroneous offset payment has been made. The disbursing official may deduct the amount of the erroneous offset payment from future amounts payable to the creditor agency. Alternatively, upon the disbursing official's request, the creditor agency shall return promptly to the disbursing official or the affected payee an amount equal to the amount of the erroneous payment (without regard to whether any other amounts payable to such agency have been paid). The disbursing official and the creditor agency shall adjust the debtor records appropriately.

[63 FR 23357, Apr. 28, 1998, as amended at 70 FR 22789, May 3, 2005]

§ 285.8 Offset of tax refund payments to collect state income tax obligations.

(a) *Definitions.* For purposes of this section:

Debt as used in this section means past-due, legally enforceable State income tax obligation unless otherwise indicated.

Debtor as used in this section means a person who owes a state income tax obligation.

FMS means the Financial Management Service, a bureau of the Department of the Treasury.

IRS means the Internal Revenue Service, a bureau of the Department of the Treasury.

Past-due, legally enforceable State income tax obligation means a debt which resulted from:

(1) A judgment rendered by a court of competent jurisdiction which has determined an amount of State income tax to be due,

(2) A determination after an administrative hearing which has determined an amount of state income tax to be due and which is no longer subject to judicial review, or

(3) A State income tax assessment (including self-assessments) which has become final in accordance with State law but not collected and which has not been delinquent for more than 10 years.

State means the several States of the United States. The term "State" also includes the District of Columbia, American Samoa, Guam, the United States Virgin Islands, the Commonwealth of the Northern Mariana Islands, and the Commonwealth of Puerto Rico.

State income tax obligation means State income tax obligations as determined under State law. For purposes of this section, State income tax obligation includes any local income tax administered by the chief tax administration agency of the State.

Tax refund offset means withholding or reducing a tax refund overpayment by an amount necessary to satisfy a debt owed by the payee(s).

Tax refund payment means any overpayment of Federal taxes to be refunded to the person making the overpayment after the IRS makes the appropriate credits as provided in 26 U.S.C. 6402(a) and 26 CFR 6402-3(a)(6)(i) for any liabilities for any Federal tax on the part of the person who made the overpayment.